

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE ESTATE OF NENA CHARLEY,
by and through Personal Representative,
TIMOTHY CHARLEY, TIMOTHY
CHARLEY, as parent and next friend of
NILE CHARLEY, and TIMOTHY CHARLEY, Individually,

Plaintiffs,

vs.

Cause No. 1:22-cv-00033-JB-JFR

THE UNITED STATES OF AMERICA, ROBIN
RANELL SALES, R.N., JOELLE CATHERIN
CERO GO, R.N., AB STAFFING SOLUTIONS,
LLC, a Foreign Corporation, NEXT MEDICAL
STAFFING, a Foreign Corporation, and JOHN or
JANE DOE Corporation,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANT UNITED STATES'
MOTION FOR PROTECTIVE ORDER REGARDING
THE DEPOSITION OF DR. ERIC KETCHAM (ITS EXPERT WITNESS)**

COME NOW Plaintiffs, by and through their counsel of record, Curtis & Co. Law Firm, and hereby respond in opposition to Defendant United States' Motion for Protective Order Regarding the Deposition of Dr. Eric Ketcham. Doc. 184.

I. ARGUMENT

Defendant USA has unnecessarily delayed the taking of the properly scheduled and set deposition of its expert, Dr. Eric Ketcham by filing this Motion for Protective Order. Defendant USA filed its Motion for Protective Order claiming Plaintiffs did not seek leave to take any depositions beyond the ten-deposition limit. Defendant failed to include the fact that Plaintiffs informed the Court at the initial scheduling conference they would likely need additional discovery, to which the Court responded it would be inclined to grant. On August 23, 2023,

Plaintiffs filed their Opposed Motion for Additional Depositions and Written Discovery based on Defendant's objection to allow the deposition of its expert, Dr. Eric Ketcham to go forward. On September 14, 2023, Plaintiffs sent an email to Defendant USA again informing Defendants that the Court stated, if needed, the Court was inclined to grant any extension of the number of depositions given the Joint Discovery Plan. Exhibit "1."

Plaintiffs asked Defendant if it would withdraw its Motion for Protective, however, Defendant did not respond to Plaintiffs emails. Defendant would not withdraw its Motion for Protective Order Regarding the Deposition of Dr. Ketcham¹ even though the date for Dr. Ketcham's deposition had passed. Defendants would also not withdraw their Motion for Protective order despite the Court's discussion with all counsel at the recent status conference on October 6, 2023, where the Court instructed Defendants to provide dates of availability for the depositions of their experts. Plaintiffs incorporate their Amended Reply to Defendant's Amended Response in Opposition to Plaintiffs' Motion for Additional Discovery. Doc. 204.

Defendant is aware that one of the ten depositions it claims Plaintiffs exceeded included the deposition of Tami Allision who is the current CEO of the Gallup Indian Medical Center (GIMC). In Defendant's Amended Response, Defendant states, "Plaintiffs have already deposed two GIMC employees who had no personal knowledge of the events. Plaintiffs deposed the Chief Nurse Executive, Tami Murphy Allison on March 2, 2023." Doc. 166. That statement is untrue as Plaintiffs immediately ended the deposition once Plaintiffs realized the USA did not provide the correct CEO for deposition as requested, which was the CEO in place at the time of the incident. The fact that Defendants include this deposition in the ten they are counting against Plaintiffs is completely unreasonable.

¹ Defendant failed to attach its Exhibit A, Plaintiffs ask the Court to strike or disregard the referenced Exhibit "A".

II. CONCLUSION

Defendant delayed the taking of Dr. Ketcham's deposition and unnecessarily filed a Motion for Protective Order, is failing to cooperate with counsel in discovery and refused to withdraw this motion causing Plaintiffs' counsel unnecessary work and expenditure of limited time and resources.

WHEREFORE, Plaintiffs request the Court deny Defendant's Motion for Protective Order and that Defendant USA provide dates of availability for Dr. Ketcham's deposition as the Court instructed on October 6, 2023.

Respectfully submitted,

Attorneys for Plaintiffs

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/s/ Melanie L. Ben
Lisa K. Curtis
Melanie L. Ben

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2023 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which caused counsel of record to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Melanie L. Ben
Melanie L. Ben, Esq.